

EX PARTE OR LATE FILED

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January 28, 1999

**EX PARTE PRESENTATION**

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
Portals II Building  
445 Twelfth Street, SW  
Washington, DC 20554

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**JAN 28 1999**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

Re: *In the Matter of Applications for Transfer of Control to SBC  
Communications Inc. of Licenses and Authorizations Held by Ameritech  
Corporation, CC Docket No. 98-141*

Dear Ms. Salas:

In a December 15, 1998 ex parte letter addressed to the Federal Communications Commission and U.S. Department of Justice, Covad Communications Company uses sound bites from a California arbitration decision to attempt to bring SBC Communications' efforts to open the local exchange market in California into question. SBC is compelled to respond. While SBC strongly disagrees with many of the arbitration panel's findings, we do not intend to re-litigate the issues here. Rather, SBC will take this opportunity to highlight verifiable facts that are grossly inconsistent with actions one would expect of a company seeking to block or delay competition.

Many of Covad's claims relate to the provisioning of co-location and transport. SBC has never disputed that unprecedented and unanticipated CLEC demand for co-location space (increasing 400 percent in late 1997) caused Pacific Bell to miss contractually committed to due dates. (SBC does dispute, however, that it was the sole cause of these problems.) Nor does SBC dispute that implementing the Act was difficult, particularly under the unanticipated order load experienced in California, and that opportunities for errors and mistakes did arise. SBC has made no attempt to hide the fact that errors and mistakes occurred – on both sides. In fact, the Affidavit of Stephen Carter to which Covad refers in its letter specifically references the problems experienced in California. The important point is, however, that these problems are now history. While some CLECs may opt to pursue claims for damages under the arbitration clauses of their interconnection agreements, with minor exception, these problems simply do not exist today.

Today, Pacific Bell is meeting all of its obligations relating to co-location under its interconnection agreements with CLECs. As the arbitration panel itself noted: "Pacific has demonstrated that it has made improvements in on-time provision of

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service. Pacific employees appearing before the panel seemed, with few exceptions, dedicated to solving the problems that have admittedly delayed their response to the demands of the Act. Pacific has represented to the panel that 'Covad's problems with Pacific are a thing of the past' and that it is now 'current on meeting its collocation period (120 days) with appropriate transport.'"

Contrary to the picture Covad tries to paint, SBC has been and remains strongly committed to opening our local networks in compliance with the 1996 Act and thus facilitating market entry by other local service providers. In 1997 alone, Pacific Bell incurred more than \$442 million in expense and capital expenditures to implement the Act. Through 1998, that figure grew to \$715 million.

With these funds and significant effort, Pacific Bell has been able to eliminate all co-location order backlogs. This effort included repeated surveys of central offices in an effort to find or create additional co-location space. Pacific Bell also voluntarily accelerated the provisioning of co-location spaces from its agreed to 120 days to 90 days for 147 CLEC co-location requests involving resurveyed offices. In an effort to meet additional CLEC requests for space, Pacific Bell offered the option of common cage co-location, whereby Pacific Bell could accommodate a greater number of CLECs in the same space than it could with individual cages. (The CLECs rejected this proposal, opting instead for individual co-location cages.) And Pacific Bell has always offered the CLECs the opportunity of having a third party inspect central offices where space is denied.

To date, Pacific Bell has provisioned over 780 operational cages in approximately 245 central offices and is working on requests for 172 more. The forecasted expenditures for co-location in 1998 in California are \$84 million.

Covad also complains of incidents of unavailability of loops. Covad fails to advise the Commission and the Department, however, of a recent order from a federal district court in the Northern District of California, where Covad filed a complaint based on the identical allegations it made in the arbitration. In denying Covad's request for an injunction, the judge found that "Covad has not, for purposes of this motion, persuaded the Court that these problems [relating to local loops] have been intentional on Pacific's part." The court's refusal to grant any of Covad's requested forward-looking injunctive relief – relating to co-location, loop provisioning and spectrum management – is further evidence of the historic nature of the problems experienced in California.

As to the claims that SBC has delayed Covad's entry into the local market, Covad's words speak for themselves. According to Covad press releases:

- By December 8, 1997, Covad was offering DSL to 400,000 homes and businesses in Northern California.

- Covad's DSL-based Telespeed service was available to over 1.3 million homes and businesses in Northern California as of August 1998.
- Covad is building to serve 1.7 million homes and businesses in Southern California by the end of 1998.
- Covad passed the 1 million homes mark in Northern California in "roughly one-half the time that leading cable modem service providers required to reach the same homes-passed."

Covad has not been excluded from, or delayed in its entry into, the California market.

The actions and efforts of SBC described above are glaringly inconsistent with any suggestion that SBC has attempted to block or hinder competitors in the local market. Did Pacific Bell experience problems implementing the Act early on? Yes. Do those problems continue today? No.

Respectfully submitted,



Dale (Zeke) Robertson  
Senior Vice President

cc: Hon. William E. Kennard  
Hon. Susan Ness  
Hon. Harold W. Furchtgott-Roth  
Hon. Michael K. Powell  
Hon. Gloria Tristani  
Prof. Thomas Krattenmaker  
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